IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.752 OF 1998

Mr. S.S. Roy of Bombay
Indian Inhabitant
Retired Chief Commissioner of
Income Tax, Gujarat, Ahmedabad
Residing at C/o. M.s Sumona Roy
B/405, Adarsha, Spring Mill Compound
Dadar East, Mumbai 400 014. ..Petitioner

Vs.

1. The Union of India
   through the Secretary,
   Ministry of Finance,
   Department of Revenue,
   North Block,
   New Delhi 110 001.

2. The Estate Officer
   Appointed under Section 3
   of Public Premises(Eviction
   of Unauthorised Occupants)
   Act, 1971, 3rd floor, Old
   C.G.O. Building, 101,
   M.K.Road, Churchgate,
   Mumbai 400 020.

3. The Secretary
   Ministry for Urban Development
   Government of India, Nirman Bhavan
   New Delhi 110 011.

4. Director of Estate
   Ministry for Urban
   Development, Government
   of India, Nirman Bhavan,
   New Delhi 110 011.

5. Chief Engineer
   Central Public Works
   Department (Western Zonal),
   Office of the Chief
   Engineer (WZO), CGO Annexe
   M.K. Road, CHurchgate,
   Mumbai 400 020.

6. The Chief Commissioner
   of Income Tax
   Gujarat
   Ahmedabad. ..Respondents

Mr.Ramesh Ramamurthy for Petitioner
Mr. T.G.Kaushik for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 8TH APRIL, 2005.

JUDGMENT (PER F.I. REBELLO,J.)

. The Petitioner retired from the services of Respondent No.1 as Chief Commissioner of Income Tax on 1st March, 1996. He was earlier posted in Mumbai and was occupying Government Quarters at Mumbai. He was transferred to Madras. The Petitioner joined his posting at Madras but continued to occupy the Governmental premises at Mumbai. The Petitioner there after retired from services.

. The Respondents initiated proceedings under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 Pursuant an order made by the Estate Officer under the Act, a demand was made on the Petitioner in the sum of Rs.5,29,274/- for the period upto 13th January, 1995. It is the case of the Petitioner that on account of this illegal demand, a sum of Rs.3,39,623/- of terminal benefits was not paid to him. The Petitioner filed an application before Central Administrative Tribunal which was numbered as O.A.No.842 of 1996, which was disposed of on 10th

April, 1997. Certain directions were issued including for refund after adjusting thrice the licence fee for unauthorised occupation of the Government accommodation by the Petitioner for the period from 11th June, 1992 to 13th January, 1995. A Review Petition was preferred which was dismissed. The Petitioner's case is that he was paid the retrial dues in the month of July,, 1997 after deducting three times the licence fee for the period of occupation. It is the Petitioner's case that no interest has been paid on the balance of the retiral dues. In so far as proceedings under which damages were awarded, Central Administrative Tribunal, has set aside the said order and the matter was remanded back to the Officer to reassess the deemed rent in terms of the said order. It is against the order refusing to grant interest, for the unpaid dues that the present Petition has been filed.

2. On behalf of the Petitioner learned Counsel submits that the retiral dues could not have been withheld and as they have been withheld he is entitled for interest at the rate of 18% per annum and for that purpose places reliance on the judgment of the Apex Court, in the case of **R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and another (1994) 28 Administrative Tribunal Cases, 516.** In that case interest at the

rate of 18% was awarded on delayed payment of gratuity. The sums which were withheld in the instant case are (i) commuted value of pension, (ii) Central Government Employees Insurance Scheme, (iii) Leave encashment facilities.

3. On the other hand on behalf of the Respondent the learned Counsel submits that as the Petitioner was in unauthorised occupation of Government premises the Respondents were within their jurisdiction in withholding part of the terminal dues and if so withheld, it is not open to the Petitioner to claim interest on the said amount. Learned Counsel has placed reliance on the judgment of **Union of India and another Vs. Wing Commander R.R. Hingorani, (1987) 1 Supreme Court Cases, 551** That judgment does not support the case of the Respondent but on the contrary supports the case of the Petitioner. That case lay down that commuted portion of pension is protected from adjustment or confiscation and in these circumstances Government was not competent to recover from the commuted portion of the pension of a pensioner, the amount due to it towards damages on account of unauthorised occupation of Government accommodation. Reliance is also placed on the judgment of the Apex Court in **Union of India and others. Vs. Shiv Charan, 1991 Supp(2) Supreme Court Cases, 386.** Wherein it is

held that in case of overstaying, rent for overstaying can be deducted from dues payable to Government Servant. There is nothing to indicate whether those were retiral dues. Reliance is also placed on the judgment in the case of Union of India Vs. Sisir Kumar Deb, 1999 Supreme Court Cases (L & S), 781 for the proposition as to what can be deducted. In that case it was dearness relief on the pension that was deducted. Reference is also placed on the C.C.S. (Pension) Rules. In so far as gratuity is concerned for the delay up to three months and up to one year interest paid is 7% and beyond one year at 10%.

4. We have heard learned Counsel for the parties. The issue of quantum of damages which could be levied for over-stay has still not been decided finally and is pending before the Estate Officer at Calcutta, as the proceedings were transferred from Mumbai to Kolkota at the instance of request of the Petitioner herein.

. The power to withhold any amount from a Government employee must be founded on some rule or enactment or should be governed by any administrative institution. As noted earlier we are concerned with three amounts. We may firstly deal with commuted value of pension. Deduction from

commuted value of pension had come up for consideration before the Apex Court in the case of Wing Commander Hingorani (supra). The Apex Court on consideration of the issue, was pleased to hold that the commuted portion of pension cannot be withheld on account of unauthorised occupation of Government accommodation. Clearly therefore, in so far as commuted value of pension is concerned, it was not open to the Respondents to have withhold the said amount. The amount was received on 20th July, 1997. Ordinarily the amount ought to have been paid in terms of the rules. The decision of Government of India in so far as gratuity is concerned, for delayed payment of gratuity is that if the delay is for three months and up to one year 7% and if it is beyond one year 10%. On behalf of the Respondent State the learned Counsel points out that the said principle is also applicable in the case of pension. In other words the rate of interest governed would be the same. The commuted value of the pension therefore could not have been withheld. As noted earlier the delay is of more than twelve months . In fact 17 months. Learned Counsel for the Petitioner, however placing reliance on the judgment of Apex Court in the case of R. Kapur Vs. Director Inspection (supra) contends that interest should be paid at the rate of 18%. On behalf of the Respondent State learned Counsel draws our attention

to the judgment in State of Kerala another Vs. M. Padmanabhan Nair, (1985), Supreme Court Cases, 356 to point out that the interest payable would be 12%.

5. We are clearly of the view that as the Petitioner's pension or rather commuted value therefore, has been wrongly withheld. The Petitioner therefore on the commuted amount of pension is entitled to interest at the rate of 10% from the day when it became due till he received it on 20th July, 1997. It is no doubt true from what the learned Counsel for the Petitioner has pointed out to us, that of Apex Court, had enhanced interest to 18% from what was earlier awarded. It will not be possible considering that the rules themselves provide for 10% interest to provide more than what is statutorily payable. Judgment of the Apex Court, will have to be limited to the facts of that case and the issues involved therein. In the instant case from the date the Petitioner retired and till his payment on 20th July, 1997 Petitioner would be entitled to interest at 10% simple interest till payment.

6. In so far items 2 and 3 are concerned this does not form either part of pension, although it may be part of the terminal benefits. In so far as insurance scheme and leave encashment to claim

interest there must be provisions by which the Petitioners are entitled to interest. None has been pointed out. In our opinion therefore, in so far as items 2 and 3 are concerned, even if the money was wrongly withheld the issue of granting interest on the amount withheld, does not arise. In the light of that the following order.

7. Rule made partly absolute in as much as the Respondents are directed to pay to the Petitioner simple interest on the sum of Rs.1,58,909/- from the date of his retirement till the Petitioner was paid the amount, i.e. 20th July, 1994 at the rate of 10%.

. Counsels have informed that pursuant to orders of this Court at the stage of admission, various amounts have been deposited. The Registry to pay to the Petitioner on the said amount, the interest calculated at 10% from the date of retirement till the date of payment i.e. 20th July, 1997. After paying the interest on the commuted value of pension, along with accrued interest on that amount, the balance to be returned to the Respondents along with proportionate interest if any.

. There shall be no order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)